

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IMAGINE, INC., a Nevada	)	No. C-06-2692 SC
corporation,	)	
	)	
Plaintiff,	)	ORDER TO SHOW CAUSE
	)	WHY THE ACTION SHOULD
v.	)	NOT BE REMANDED TO
	)	<u>STATE COURT</u>
	)	
SPI/SEMICON, INC., a California	)	
corporation; SPI/SEMICON PHILS.	)	
INC., a Philippines corporation;	)	
SPI/SEMICON EUROPE GmbH, INC.,	)	
an Austrian corporation; DML, INC.,	)	
a Nevada corporation; DAVID	)	
KIETZKE, an individual; LARRY	)	
KIETZKE, an individual; MICHAEL	)	
KIETZKE, an individual; and	)	
DOES 1-50, inclusive,	)	
	)	
Defendants.	)	

**I. INTRODUCTION**

Imagine Inc. ("Plaintiff" or "Imagine") brought this action against SPI/Semicon, Inc., et al. ("Defendants") in the Superior Court for the County of Alameda, California, alleging causes of action for, inter alia, breach of contract and fraud. Defendant DML, Inc. is incorporated in Nevada, as is Plaintiff.

Defendants timely removed the action to this Court based on diversity of the parties, alleging that the non-diverse defendant, DML, Inc., is a "sham defendant who must be disregarded in determining diversity." Defendants have also filed a motion to dismiss certain defendants for lack of personal jurisdiction and to dismiss certain causes of action for failure to state a claim upon which relief can be granted.

The Court, for the reasons contained herein, ORDERS

1 Defendants to show cause why the case should not be remanded to  
2 state court for want of subject matter jurisdiction. Submissions  
3 on this issue must be filed with the Court within thirty days from  
4 the date of this Order.

5 If, after full and timely briefing on the issue, the Court  
6 finds that it has subject matter jurisdiction over this action,  
7 the Court will then rule on Defendants' motion to dismiss certain  
8 defendants and causes of action. If, however, the Court finds  
9 that it lacks subject matter jurisdiction, the case will be  
10 remanded to state court.

## 11 **II. BACKGROUND**

12 Plaintiff Imagine Inc. is a corporation organized under the  
13 laws of Nevada. See Complaint ¶ 1 ("Compl."); Notice of Removal  
14 ¶ 7 ("NR"). Defendant DML, Inc. is also a Nevada corporation.  
15 See Compl. ¶ 5; NR ¶ 8.

## 16 **III. DISCUSSION**

17 On the face of the Complaint, it appears that complete  
18 diversity is lacking.

19 Yet, Defendants removed to this Court alleging that diversity  
20 jurisdiction exists. To this end, Defendants contend that "DML is  
21 a sham defendant who must be disregarded in determining diversity"  
22 because "DML is not alleged to be the alter ego of SPI Asia or of  
23 SPI Europe, the only Defendants with whom Plaintiff alleges it  
24 contracted. As DML is not alleged to be the alter ego of SPI Asia  
25 or SPI Europe, and is further not alleged to be the agent of  
26 either, as a matter of law, it cannot be liable for their  
27 actions." NR ¶ 17.

1 A federal court may examine the question of subject matter  
2 jurisdiction sua sponte. See Steel Company v. Citizens for a  
3 Better Environment, 523 U.S. 83, 94 (1998). When a court lacks  
4 jurisdiction, the "only function remaining to the court is that of  
5 announcing the fact and dismissing the cause." Id., quoting Ex  
6 parte McCardle, 7 Wall. 506, 514 (1868).

7 Suits filed in state court may be removed to federal court  
8 where the federal court would have had original jurisdiction over  
9 the action in the first instance. 28 U.S.C. § 1441(a). The  
10 federal courts have "original jurisdiction over all civil  
11 actions arising under the Constitution, laws or treaties of the  
12 United States." 28 U.S.C. § 1331. The federal courts have  
13 original jurisdiction over all civil actions where the matter is  
14 between citizens of different states and where the amount in  
15 controversy exceeds the sum or value of \$75,000, exclusive of  
16 interests and costs. 28 U.S.C. § 1332.

17 The Court reminds the parties that the removal statute is  
18 strictly construed against removal. See Boggs v. Lewis, 863 F.2d  
19 662, 663 (9th Cir. 1988). The defendant seeking removal of an  
20 action to federal court has the burden of establishing grounds for  
21 federal jurisdiction in the case. See Gaus v. Miles, Inc. 980  
22 F.2d 564, 566 (9th Cir. 1992).

23 As to the instant case, although Defendants partially  
24 addressed this issue in the Notice of Removal, the Court orders  
25 Defendants, who have the burden of establishing that the Court has  
26 removal jurisdiction, to submit further briefing to show cause why  
27 the case should not be remanded for want of jurisdiction.  
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1 Plaintiff is, of course, entitled to file briefing on this issue  
2 within thirty days from the date of this Order.

3 If Defendants fail to file within thirty days from the date  
4 of this Order, the Court will remand the action to state court.

5 **IV. CONCLUSION**

6 The Court ORDERS Defendants TO SHOW CAUSE why this action  
7 should not be dismissed for lack of subject matter jurisdiction.  
8 If Defendants fail to file within thirty days from the date of  
9 this Order, the Court will remand the action to the California  
10 state court from whence it came.

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12 IT IS SO ORDERED.

13 Dated: June 8, 2006

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17 UNITED STATES DISTRICT JUDGE  
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